

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Rural Call Completion |) | WC Docket No. 13-39 |
| |) | |

REPLY COMMENTS OF INTELIGENT, INC.

Inteligent, Inc. (“Inteligent”), by counsel, files these reply comments in response to the *Second Report and Order* and *Third Further Notice of Proposed Rulemaking* (“FNPRM”) that the Commission adopted in the above captioned proceeding.¹

In the initial comment round in response to the FNPRM, Inteligent joined a diverse group of industry participants in supporting the Commission’s efforts to address pervasive problems in the completion of calls to rural and remote parts of the country. The record provides the Commission with a solid basis to adopt the common sense rules proposed in the FNPRM, including the requirement that intermediate providers comply with industry best practices to prevent call looping, crank back, and processing of calls in a manner that might otherwise allow a party to terminate and re-originate them. Inteligent reiterates its support for these measures.

That said, given that the very purpose of this proceeding is to improve call completion rates, the filing by HD Tandem has to be seen as a surprise.² Although HD Tandem makes no

¹ *Rural Call Completion*, WC Docket No. 13-39, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 18-45 (rel. Apr. 17, 2018) (*Second R&O* and *Third FNPRM*).

² HD Tandem asserts that “cost shifting” techniques are responsible for failures of calls to its or affiliated entities’ telephone numbers. The Commission’s existing and proposed rules—which Inteligent wholeheartedly supports—together would prohibit the type of activities which HD Tandem mentions in its comments, such as re-origination schemes like “SIM by-pass” or “Hacked PBX.” As explained below, however, it is HD Tandem or one of its affiliates, such as Free Conferencing, which has engaged in “shifting” of all sorts. This behavior includes the

mention of its ownership structure in its comments, the company in fact has overlapping ownership and management with Free Conferencing Corporation (“Free Conferencing”) and other affiliated entities that routinely engage in access stimulation schemes.³ These schemes flood the public switched network with millions of calls to telephone numbers associated with rural CLECs but routinely processed in servers elsewhere in non-rural locations, thus masquerading as traffic of the sort destined to people, schools, businesses, and other institutions actually located in rural America.

While the Commission has taken laudable steps to limit access stimulation and its harmful effects, HD Tandem, Free Conferencing, and its business partners continue to find new ways to profit from loopholes (real and perceived) in the regulatory regime. Indeed, it has come to Inteliquent’s attention that HD Tandem and Free Conferencing (or certain of their affiliates) may be *intentionally* blocking traffic to induce re-routing of stimulated traffic from regulated to private pathways that benefit HD Tandem directly, as Inteliquent explained in its initial comments. Given HD Tandem’s remarkable suggestion that the Commission use this rural call completion proceeding to “act in the interests of” HD Tandem,⁴ Inteliquent feels compelled to submit these reply comments setting forth a bird’s-eye view of the ongoing access stimulation schemes that plague the entire public switched network and contribute to call completion challenges.

blocking of traffic to induce re-routing of calls from regulated pathways owned and operated by companies who are unaffiliated with Free Conferencing to a non-regulated network owned and operated by its affiliate, HD Tandem.

³ As used in these reply comments, references to Free Conferencing include its affiliated or associated entities.

⁴ HD Tandem Comments at 1.

I. ACCESS STIMULATION SCHEMES HAVE PLAGUED THE PUBLIC SWITCHED NETWORK FOR YEARS.

As the Commission recently explained, “[a]ccess stimulation (also known as traffic pumping) occurs when a [LEC] with relatively-high switched access rates enters into an arrangement to terminate calls—often ostensibly in a remote area—for an entity with a high volume call operation, such as a chat line, adult entertainment calls, and ‘free’ conference calls.”⁵ Or as the CEO of HD Tandem and Free Conferencing (among other related entities) has bluntly acknowledged:

Conference call providers typically make money in two ways: By charging customers a fee for the call and by sharing toll revenue collected by the phone companies. I figured if I cut out the customer fee and just shared the toll revenue with the phone companies, it could turn into meaningful revenue.⁶

The Commission recognized in 2011 that access stimulation schemes, such as those perpetrated by Free Conferencing, “impose undue costs on consumers, inefficiently diverting the flow of capital away from more productive uses such as broadband deployment, and hurts competition.”⁷ The Commission accordingly adopted a landmark reform to reduce the profitability of access stimulation, specifically by adopting a definition of “access stimulation” and requiring LECs engaged in such activity to reduce their access charges accordingly (*e.g.*, to the lowest price cap rate in the state). In another important series of decisions, pursuant to the “Farmer’s test,” the Commission has held that a LEC cannot bill an IXC “for calls ‘terminated’

⁵ *Updating the Inter-carrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Notice of Proposed Rulemaking, FCC 18-68 at para. 2 (rel. June 5, 2018) (“*Access Arbitrage NPRM*”).

⁶ David Ericson, *CEO Sundays: How I Turned a \$10 URL into a Multi-Million Dollar Business*, Techli (Feb. 22, 2015), <https://techli.com/2015/02/ceo-sundays-how-i-turned-a-10-url-into-a-multi-million-dollar-business/> (last visited June 18, 2018).

⁷ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17875, para. 663 (2011) (“*USF/ICC Transformation Order*”).

at a conference call bridge when the conference calling company does not pay a fee [to the LEC] for those services.”⁸ Or, put another way, LECs cannot assess access charges for delivering calls to their own access-stimulation business partners.

Unfortunately, despite some progress, Free Conferencing and other parties continue to engage in access stimulation. While it is disappointing that access stimulation schemes have continued to thrive despite the Commission’s meaningful reforms, it is not surprising. As the U.S. Court of Appeals for the D.C. Circuit noted in a decision last year upholding an award of damages against a traffic pumping scheme, “It has been said that ‘[t]he darkest hour of any man’s life is when he sits down to plan how to get money without earning it.’ But that does not seem to keep people from trying.”⁹ Free Conferencing and HD Tandem exemplify this notion, using a shifting series of tactics to maintain profits from access stimulation schemes. And as discussed below, whereas these schemes originally entailed artificially flooding the public switched network with traffic—thus indirectly complicating efforts to complete all calls to actual people and businesses living and operating in rural America—HD Tandem and Free Conferencing (or others acting on their behalf) now may be going so far as to *block* the very traffic that they stimulate to create new sources of revenue.

II. INTELIGENT’S EXPERIENCE ILLUSTRATES THE HARMS OF EVOLVING TRAFFIC PUMPING SCHEMES.

Inteliquent facilitates the exchange of traffic among carriers and providers of all types, including wireless, cable, rural and interexchange carriers. Like any carrier that transports and terminates traffic throughout the public switched network, Inteliquent and its customers have

⁸ *All Am. Tel. Co., Inc. v. Fed. Comm’n Comm’n*, 867 F.3d 81, 85 (D.C. Cir. 2017) (internal quotations and citations omitted).

⁹ *Id.* (quoting statement attributed to Horace Greeley).

fallen victim to access stimulation schemes. Inteliquent has witnessed firsthand that, as the Commission's rules and policies have changed to discourage these schemes, access pumpers and their business partners have shifted tactics in an attempt to stay one step ahead of the law.

Free Conferencing's Non-Compliant Farmer's Arrangement with Native American Telecom. Inteliquent makes its services generally available to all carriers, including competitive LECs. In mid-2015, Inteliquent experienced a large increase in inbound IXC traffic destined to (among other places) two competitive LECs in South Dakota: Native American Telecom, LLC ("NAT LLC") and Native American Telecom – Pine Ridge ("NAT-PR") (collectively, the "NAT Entities"). Not surprisingly, the vast majority, if not all, of these calls were associated with "free" conference calling and streaming radio services, most notably Free Conferencing or access-stimulating entities like or affiliated with it.

As additional background, beginning in 2009, Free Conferencing entered into a series of arrangements with the NAT Entities, perpetrating an access pumping scheme that ultimately was uncovered through litigation brought by Sprint in federal court against NAT LLC. As Sprint has explained, discovery in that litigation revealed that NAT LLC "was created as a sham entity" to benefit Free Conferencing and companies owned by its CEO or his family trust.¹⁰ As the federal court in that case found in 2016, the relationship between NAT LLC and Free Conferencing "resembles a relationship between business partners attempting to operate in a manner only superficially consistent with the FCC's rules and regulations."¹¹ Accordingly, it was unlawful

¹⁰ *Wide Voice, LLC – Application to Provide Facilities-Based and Resold Local Exchange and Resold Long Distance Telecommunications Services*, MPUC Docket No. P6877/NA-11-1055, Petition to Intervene, Initial Comments, and Request for Contested Case Proceeding of Sprint Communications Company L.P., State of Minnesota Public Utilities Commission, at 3, para. 7. (available at <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId=%7BE99ADBDA-832E-4D8A-B931-F6E58CF58708%7D&documentTitle=20124-74188-01>) (last visited June 18, 2018).

¹¹ *Sprint Commc'ns Co. L.P. v. Crow Creek Sioux Tribal Court*, 200 F. Supp. 3d 857, 874 (D.S.D. 2016).

for NAT LLC to assess access charges for receipt of traffic bound for telephone numbers associated with Free Conferencing.¹²

Free Conferencing's Fallback: Induce Traffic to Move to its Own Commercial Network.

While Sprint's efforts to blow the whistle on the sham relationship between Free Conferencing and NAT LLC were ongoing, in mid-2015, HD Tandem along with its affiliated entities (including Free Conferencing), approached Inteliquent and offered a deal to Inteliquent that supposedly would aid in the burden of dealing with this type of traffic. For a series of reasons well-documented in separate, pending federal court litigation, Inteliquent entered into the deal, but has since commenced litigation raising numerous legal grounds under which Inteliquent vigorously disputes the legitimacy of the charges HD Tandem imposed upon it under that arrangement.¹³ As Inteliquent has explained to the court: "defendants try to use HD Tandem as a vehicle to remove the compensation arrangements for traffic destined to Free Conferencing [or affiliated entities] out of the regulated context (where it could be even more heavily scrutinized and, indeed, found unlawful in the context of the Sprint/NAT Decision) and into the private commercial context."¹⁴

Shortly after Inteliquent brought the federal court litigation, in July 2016, HD Tandem abruptly terminated services to Inteliquent. This precipitous action meant that Inteliquent had to find other pathways to deliver calls to numbers associated with the NAT Entities—as well as to

¹² *See id.*

¹³ For brevity, Inteliquent is not repeating in these reply comments all of the claims it has asserted in the Illinois federal court litigation against HD Tandem *et al.* For a full recitation of those claims, please refer to Inteliquent's Third Amended Complaint. *See* Third Amended Complaint and Jury Demand, *Inteliquent, Inc. v. Free Conference Corp. et al.*, No. 16 cv 06976 (N.D. Ill. Jan. 1, 2018). Inteliquent's comments herein are qualified in full by the Third Amended Complaint. By filing these reply comments, Inteliquent does not waive or limit any of its claims in the Third Amended Complaint.

¹⁴ *Id.* at para. 34.

other rural CLECs also associated with phone numbers used to reach Free Conferencing and other access stimulating entities, including in Iowa. Inteliquent takes call completion seriously, and rather than allow the calls to fail—even though the failure was a result of HD Tandem’s (or one of its affiliate’s) own actions affecting traffic to its affiliated traffic-pumping entities—Inteliquent re-routed traffic to IXC’s or other parties, which generally handed off the traffic to HD Tandem. HD tandem, in turn, delivered the traffic via a direct connection to the terminating LECs serving Free Conferencing or affiliated entities.¹⁵

Free Conferencing Starts Outright Blocking of Calls. Having lost in court to Sprint and exposed by a federal court as being in violation of the Farmer’s test, and faced with similarly daunting facts in litigation with Inteliquent, Free Conferencing and HD Tandem appeared to step back from reliance on the relationship with the NAT Entities. This did not mean the end, however, of traffic pumping schemes.

In particular, Free Conferencing or its affiliates shifted substantial volumes of traffic away from numbers associated with the NAT Entities and over to other LECs. Inteliquent soon experienced a spike in traffic to Free Conferencing and other traffic pumpers’ phone numbers associated with small Iowa and South Dakota-based rural LECs, other than the NAT Entities. One of these is known as “Reasnor.” Reasnor is a rural LEC that subtends the centralized equal access (“CEA”) tandem in Iowa, operated by Iowa Network Services d/b/a Aureon (“Aureon”). Inteliquent soon experienced numerous problems delivering traffic destined to these Iowa and South Dakota-based LECs via the Aureon tandem, especially with respect to Reasnor. Fewer than *ten percent* of calls that Inteliquent delivered to Aureon for termination to Reasnor (*i.e.*,

¹⁵ Inteliquent understands that HD Tandem in many instances terminated the traffic directly to the high-volume platform (bypassing the ostensibly terminating LEC).

over the “regulated” pathway, subject to tariffed rates) completed. Inteliquent diligently investigated the problem and alerted Aureon, Reasnor, and other LECs involved, urging a resolution.

Meanwhile, to ensure completion of these calls while Inteliquent attempted in good faith to resolve the downstream blocking problems, Inteliquent “route-advanced”¹⁶ the rejected calls from the Aureon tandem to IXC’s or other parties that it understands to have direct pathways into HD Tandem. When route-advancing the call to IXC’s for delivery (instead of using the regulated path for delivery), Inteliquent understands the IXC’s sent the calls to HD Tandem’s network and the calls completed to the same terminating number. The fact that calls to Free Conferencing or other affiliated traffic pumpers’ numbers were rejected when delivered over the regulated path, but completed when delivered to Free Conferencing’s affiliated company, HD Tandem, was curious, to say the least. Inteliquent’s suspicions were confirmed when Aureon advised Inteliquent that Aureon was not the source of the rejections, and multiple LECs expressed the view that the rejections were caused by Free Conferencing or entities associated with it. Thus, contrary to HD Tandem’s claims that “fraud” is responsible for failure of its partners’ access-stimulated traffic,¹⁷ in Inteliquent’s experience, it appears that calls fail because of actions by HD Tandem or one of its affiliated entities.

What motivation would HD Tandem and its affiliates have to reject calls to their own telephone numbers? The likely answer is found by following the money. If the calls complete

¹⁶ By “route advancing,” Inteliquent means that instead of continuing to route a rejected call to the applicable tandem provider as specified in the LERG, or permitting the call to drop, it routes the call to an IXC who hands it off to HD Tandem. HD Tandem, in turn, has a direct connection to the terminating LECs serving Free Conferencing, or HD Tandem may directly terminate the traffic to the high-volume platform (bypassing the ostensibly terminating LEC).

¹⁷ See HD Tandem Comments at 2-3.

over the regulated pathways, then the rural LECs and the CEA tandem (*e.g.*, Aureon) are paid the tariffed terminating access charges.¹⁸ But if a commercial pathway is used, Aureon and its charges would be bypassed.¹⁹ In short, HD Tandem and related corporate entities have the apparent ability to capture *all* of the revenues associated with traffic pumping operations, as opposed to sharing those gains with other unaffiliated LECs. And blocking of calls delivered by Inteliquent via the regulated path is central to this new scheme.

The Access-Stimulated Traffic Comes Full Circle. After Inteliquent brought HD Tandem's call blocking scheme informally to the Commission's attention, access-stimulated traffic to Reasnor dropped precipitously. At around the same time, access-stimulated traffic bound for the NAT Entities, especially NAT-PR, materially increased. Put another way, the traffic pumping scheme has come full circle. While Inteliquent does not know yet whether it will experience similar patterns of call blocking when it attempts to deliver access-stimulated traffic to the NAT Entities, based on recent experience, it fears that this may be the case. Whatever rules are adopted pursuant to the proposed FNPRM to improve call completion, it is important too that the Commission vigorously pursue action against entities that intentionally block calls.

¹⁸ The financial benefit of these arrangements perhaps explains HD Tandem's recent pleas that the Commission "solve" access stimulation by requiring LECs that host traffic pumpers (like Free Conferencing) to offer interconnecting carriers an "Internet Protocol Homing Tandem ('IPHT') - like HD Tandem," which it asserts would provide "some rate relief" for terminating the access-stimulated traffic to its affiliated free conferencing platform. HD Tandem Oct. 26, 2017 Comments at 6 (WC Docket Nos. 10-90; 01-92). HD Tandem's proposal would subject all interconnecting carriers to the Hobson's choice of (1) paying tariffed rates for terminating high volumes of stimulated traffic to Free Conferencing's LEC business partners, for sharing with Free Conferencing, or (2) paying a slightly lower rate for handing off these high volumes of stimulated traffic to HD Tandem, which shares common ownership with Free Conferencing.

¹⁹ Free Conferencing also presumably is aware that Aureon's tandem rate likely will be decreased, in light of the Commission's finding that Aureon's rates are subject to the CLEC benchmark rule and the pending Commission investigation of its latest tariff. *See generally Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Order Designating Issues for Investigation, DA 18-395 (rel. Apr. 19, 2018). This change may be furthering Free Conferencing's incentive to move access-stimulated traffic to the NAT entities, and then block such traffic so it is carried by HD Tandem.

CONCLUSION

Inteliquent supports the Commission's efforts to improve rural call completion, and it has filed these reply comments to highlight the relationship of access pumping schemes to call blocking. While the rules that the Commission proposed in the FNPRM will improve call completion, it is important too that the Commission vigorously pursue action against entities that intentionally block calls and otherwise manipulate traffic to benefit affiliated networks and high-volume calling platforms.

Respectfully submitted,

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